Subchapter 2. Administration

§ 6021. Board; vacancy, removal

(a) An environmental board is created. The board shall consist of nine members appointed in the month of February by the governor, with the advice and consent of the senate, so that five appointments expire in each odd numbered year. The members shall be appointed for terms of four years. The governor shall appoint up to five persons, who shall be former board or district commission members, with the advice and consent of the senate, to serve as alternates for board members. Alternates shall be appointed for terms of four years, with initial appointments being staggered. The board chair may assign alternates to sit on specific cases before the board, in situations where fewer than nine board members are available to serve.--1991, No. 111, § 1, eff. July 1, 1991; Amended 1993, No. 82, § 1, eff. July 1, 1993. Amended 1993, No. 232 (Adj. Sess.), § 26, eff. March 15, 1995.

(b) Any vacancy occurring in the membership of the board shall be filled by the governor for the unexpired portion of the term.

(c) Notwithstanding the provisions of 3 V.S.A. § 2004, members shall be removable for cause only, except the chair, who shall serve at the pleasure of the governor.--1969, No. 250 (Adj. Sess.), § 3, eff. April 4, 1970. Amended 1993, No. 232 (Adj. Sess.), § 26, eff. March 15, 1995.

(d) The board chair, upon request of the chair of a district commission, may appoint and assign former commission members to sit on specific commission cases when some or all of the regular members and alternates are disqualified or otherwise unable to serve.--1989, No. 234 (Adj. Sess.), § 2.

§ 6022. Personnel

The board may appoint legal counsel and administrative personnel, as it finds necessary in carrying out its duties, unless the governor shall otherwise provide.--1969, No. 250 (Adj. Sess.), § 4, April 4, 1970; Amended 1993, No. 82, § 2, eff. July 1, 1993.

§ 6023. Grants

The board may apply for and receive grants from the federal

government and from other sources.--1969, No. 250 (Adj. Sess.), § 4, eff. April 4, 1970.

§ 6024. Intragovernmental cooperation

Other departments and agencies of state government shall cooperate with the board and make available to it data, facilities, and personnel as may be needed to assist the board in carrying out its duties and functions.--1969, No. 250 (Adj. Sess.), § 4, eff. April 4, 1970.

§ 6025. Rules

(a) The board shall adopt rules under and only to the extent of the authority granted to agencies by 3 V.S.A., chapter 25, the Vermont Administrative Procedure Act, to interpret and carry out the provisions of this chapter; however, the board may not adopt emergency rules.

(b) The rules may establish criteria under which applications for permits under this chapter may be classified in terms of complexity and significance of impact under the standards of section 6086(a) of this chapter. In accordance with that classification the rules may:

(1) provide for simplified or less stringent procedures than are otherwise required under sections 6083, 6084 and 6085 of this chapter; and

(2) provide for the filing of notices instead of applications for the permits that would otherwise be required under section 6081 of this chapter; and

(3) provide a procedure by which a district commission may authorize a district coordinator to issue a permit that the district commission has determined under board rules is a minor application with no undue adverse impact.--1969, No. 250 (Adj. Sess.), § 25, eff. April 4, 1970; amended 1973, No. 85, § 2; 1979, No. 123 (Adj. Sess.), § 4, eff. April 14, 1980; 1985, No. 52, § 3, eff. May 15, 1985; 1987, No. 186 (Adj. Sess.), eff. May 5, 1988.

(c)(1) This subsection shall apply to lots within a subdivision:

(A) that were created as part of a subdivision owned or

controlled by a person who may have been required to obtain a permit under this chapter, and

(B) with respect to which a determination has been made that a permit was needed under this chapter, and

(C) that were sold to a purchaser prior to January 1, 1991 without a required permit.

(2) The rules shall provide for a modified process by which the sole purchaser, or the group of purchasers, of one or more lots to which this subsection applies may apply for and obtain a permit under this chapter that shall be issued in light of the existing improvements, facts, and circumstances that pertain to the lots; provided, however, that the requirements of this chapter shall be modified only to the extent needed to issue those permits. For purposes of these rules, a purchaser eligible for relief under this subsection must not have been involved in creating the lots, must not be a person who owned or controlled the land when it was divided or partitioned, as a person is defined in this chapter, and must not have known at the time of purchase that the transfer was subject to a permit requirement that had not been met.

(3) Notwithstanding the provisions of subsection (a) of this section, the board may adopt emergency rules under this subsection. Notwithstanding the provisions of 3 V.S.A. chapter 25, these emergency rules may remain in effect for 180 days, before they must be replaced by permanent rules.--1991, No. 111, § 5, eff. July 1, 1991.

§ 6026. District commissioners

(a) For the purposes of the administration of this chapter, the state is divided into nine districts.

(1) District No. 1, comprising administrative district 1 as provided in section 4001 of Title 3.

(2) District No. 2, comprising administrative district 2 as provided in section 4001 of Title 3.

(3) District No. 3, comprising administrative district 3 as provided in section 4001 of Title 3.

(4) District No. 4, comprising administrative district 4 as provided in section 4001 of Title 3, excluding the towns of

Addison, Bridport, Bristol, Cornwall, Ferrisburg, Goshen, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton, Ripton, Salisbury, Shoreham, Starksboro, Vergennes, Waltham, Weybridge and Whiting.

(5) District No. 5, comprising administrative district 5 as provided in section 4001 of Title 3.

(6) District No. 6, comprising administrative district 6 as provided in section 4001 of Title 3.

(7) District No. 7, comprising administrative district 7 as provided in section 4001 of Title 3.

(8) District No. 8, comprising administrative district 8 as provided in section 4001 of Title 3.

(9) District No. 9, comprising the towns of Addison, Bridport, Bristol, Cornwall, Ferrisburg, Goshen, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton, Ripton, Salisbury, Shoreham, Starksboro, Vergennes, Waltham, Weybridge, and Whiting.

(b) A district environmental commission is created for each district. Each district commission shall consist of three members from that district appointed in the month of February by the governor so that two appointments expire in each odd numbered year. Two of the members shall be appointed for a term of four years, and the chair (third member) of each district shall be appointed for a two-year term. In any district, the governor may appoint not more than four alternate members from that district whose terms shall not exceed two years, who may hear any case when a regular member is disqualified or otherwise unable to serve.

(c) Members shall be removable for cause only, except the chairman who shall serve at the pleasure of the governor.

(d) Any vacancy shall be filled by the governor for the unexpired period of the term.--1969, No. 250 (Adj. Sess.), § 5, eff. April 4, 1970; amended 1971, No. 74, § 1; 1973, No. 54; 1985, No. 107 (Adj. Sess.), eff. March 14, 1986. Amended 1993, No. 232 (Adj. Sess.), § 27, eff. March 15, 1995.

§ 6027. Powers

(a) The board and district commissions shall have the power to compel the attendance of witnesses, and require the production of

evidence.

(b) The powers granted to the board under this chapter are additional to any other powers which may be granted to it by other legislation.

(c) The board may designate or establish such regional offices as it deems necessary to implement the provisions of this chapter and the rules adopted hereunder. The board may designate or require a regional planning commission to receive applications, provide administrative assistance, investigations, and make recommendations.

(d) The board, when it determines the workload in any district is such that unreasonable delays will result, may at the request of an overloaded district authorize the district commission of another district to sit in that district to consider applications.

(e) The board may by rule allow joint hearings to be conducted with specified state agencies or specified municipalities.

(f) [Repealed.]--1969, No. 250 (Adj. Sess.), § 25, eff. April 4, 1970; amended 1973, No. 85, § 3; 1979, No. 123 (Adj. Sess.), § 8, eff. April 14, 1980.

(f) The board may publish or contract to publish annotations and indices of its decisions, and the text of its decisions. The published product shall be available at a reasonable rate to the general public and at a reduced rate to libraries and governmental bodies within the state.--1991, No. 111, § 6, eff. July 1, 1991.

(g) Unless the board, acting on a motion of a party or on its own motion, directs the chair otherwise with respect to a particular appeal or petition, the chair may appoint a hearing officer or a subcommittee of the board to hear any appeal or petition before the board. Board members may be appointed as hearing officers, as may alternates. Any hearing officer or subcommittee shall report findings of fact and conclusions of law in writing to the board. A copy of the proposed decision shall be served on the parties pursuant to 3 V.S.A. § 811, but shall be subject to a final decision by the board. The parties shall have 15 days to request oral argument before the board. Added 1993, No. 232 (Adj. Sess.), § 28, eff. March 15, 1995.

§ 6028. Compensation

Members of the board and district commissions shall receive per diem pay and all necessary and actual expenses in accordance with 32 V.S.A. § 1010.--1969, No. 250 (Adj. Sess.), § 31, eff. April 4, 1970; Amended 1993, No. 82 § 3, eff. July 1, 1993.

§ 6029. Act 250 permit fund

There is hereby established a special fund to be known as the Act 250 permit fund for the purposes of implementing the provisions of this chapter. Revenues to the fund shall be those fees collected in accordance with rules adopted under 10 V.S.A. §§ 6025(a), 6083(a)(3) and 6089(a), gifts, appropriations, and copying and distribution fees. The environmental board shall be responsible for the fund and shall account for revenues and expenditures of the environmental board. At the commissioner's discretion, the commissioner of finance and management may anticipate amounts to be collected and may issue warrants based thereon for the purposes of this section. Disbursements from the fund shall be made through the annual appropriations process to the environmental board, and to the agency of natural resources to support those programs within the agency that directly or indirectly assist in the review of Act 250 applications. This fund shall be administered as provided in subchapter 5 of chapter 7 of Title 32, as a special program fund. --Added 1989, No. 279 (Adj. Sess.), § 2, eff. June 30, 1990; amended and reauthorized, 1993, No. 70, § 1, and 1995, No. 47, § 17; amended and reauthorized, 1997, Act 59, § 41, effective July 1, 1997.

Subchapter 3. Use and Development Plans

§ 6041. Omitted

§ 6042. Capability and development plan

The board shall adopt a capability and development plan consistent with the interim land capability plan which shall be made with the general purpose of guiding and accomplishing a coordinated, efficient and economic development of the state, which will, in accordance with present and future needs and resources, best promote the health, safety, order, convenience, prosperity and welfare of

the inhabitants, as well as efficiency and economy in the process of development, including but not limited to, such distribution of population and the uses of the land for urbanization, trade, industry habitation, recreation, agriculture, forestry and other uses as will tend to create conditions favorable to transportation, health, safety, civic activities and educational and cultural opportunities, reduce the wastes of financial and human resources which result from either excessive congestion or excessive scattering of population and tend toward an efficient and economic utilization of drainage, sanitary and other facilities and resources and the conservation and production of the supply of food, water and minerals. In addition, the plan may accomplish the purposes set forth in section 4302 of Title 24.--1969, No. 250 (Adj. Sess.), § 19, eff. April 4, 1970.

"PLANNING FOR LAND USE AND ECONOMIC DEVELOPMENT"

"(1) THE CAPABILITY OF THE LAND

"The capability of land to support development or subdivision provides a foundation for judgment of whether a proposal of development or subdivision is consistent with policies designed to make reasonable use of the state's resources and to minimize waste or destruction of irreplaceable values. Accordingly, such information regarding the physical characteristics of land as is found in the interim land capability and development plan adopted under section 6041 of Title 10, and as may hereafter be adopted as a rule of the environmental board, shall be considered a part of this capability and development plan.

"(2) UTILIZATION OF NATURAL RESOURCES

"Products of the land and the stone and minerals under the land, as well as the beauty of our landscape are principal natural resources of the state. Preservation of the agricultural and forest productivity of the land, and the economic viability of agricultural units, conservation of the recreational opportunity afforded by the state's hills, forests, streams and lakes, wise use of the state's non-renewable earth and mineral reserves, and protection of the beauty of the landscape are matters of public good. Uses which

threaten or significantly inhibit these resources should be permitted only when the public interest is clearly benefitted thereby.

"(3) PUBLIC AND PRIVATE CAPITAL INVESTMENT

"(A) A balance of public and private capital investment determines the economic well-being of a town or region. An area of industrial, recreational, or residential growth requires highways, schools, utilities, and services the cost of which is borne in large part by others. A settled area, with a full complement of public services, needs continuing private capital investment to create a tax base to pay for the services. Increased demands for and costs of public services, such as schools, road maintenance, and fire and police protection must be considered in relation to available tax revenues and reasonable public and private capital investment. The location and rate of development must be considered, so that the revenue and capital resources of the town, region or state are not diverted from necessary and reasonably anticipated increased governmental services. Accordingly, conditions may be imposed upon the rate and location of development in order to control its impact upon the community.

"(B) Consideration must be given to the consequences of growth and development for the region and the state as well as for the community in which it takes place. An activity or project that imposes burdens or deprivations on other communities or the state as a whole cannot be justified on the basis of local benefit alone.

"(4) PLANNING FOR GROWTH

"(A) Strip development along highways and scattered residential development not related to community centers cause increased cost of government, congestion of highways, the loss of prime agricultural lands, overtaxing of town roads and services and economic or social decline in the traditional community center.

"(B) Provision should be made for the renovation of village and town centers for commercial and industrial development, where feasible, and location of residential and other development off the main highways near the village center on land which is other

than primary agricultural soil.

"(C) Planning at all levels should provide for the development and allocation of lands and resources of existing cities, towns, and villages generally in proportion to their existing sizes as related to distribution state-wide and a projection of the reasonably expected population increase and economic growth, unless a community, through duly adopted plans, makes the determination that it desires and has the ability to accommodate more rapid growth.

"(D) Consistent with all other policies and criteria set forth in this act, development as defined in section 6001 of this chapter in areas which are not natural resources as referred to in paragraph (9) of this section should be permitted at reasonable population densities and reasonable rates of growth, with emphasis on cluster planning and new community planning designed to economize on the costs of roads, utilities and land usage.

"(5) SEASONAL HOME DEVELOPMENT

"Seasonal homes not only are convertible to permanent homes but are often so converted and may require increased municipal and public services. There should, therefore, be imposed such conditions upon a seasonal home development or subdivision as should be imposed upon a permanent residential development or subdivision.

"(6) GENERAL POLICIES FOR ECONOMIC DEVELOPMENT

"(A) In order to achieve a strong economy that provides satisfying and rewarding job and investment opportunities and sufficient income to meet the needs and aspirations of the citizens of Vermont, economic development should be pursued selectively so as to provide maximum economic benefit with minimal environmental impact.

"(B) Any effect which directly or indirectly accelerates economic growth should be consistent with local, regional and state objectives.

"(C) One of the long-range benefits to the community of commercial and industrial development should be to provide stable employment opportunities at all economic levels, particularly for

Vermont's unemployed and underemployed.

"(7) SPECIFIC AREAS FOR RESOURCE DEVELOPMENT

"The flow of cash into Vermont to pay for goods manufactured in the state, grown in the state, or mined and quarried in the state, and to pay for services offered in the state to out-of-staters is of primary importance to the state's economy. Enterprises adding the greatest value by conversion of native raw materials or the products of the land are particularly beneficial to the public interest.

"(8) PLANNING FOR HOUSING

"(A) Opportunity for decent housing is a basic need of all Vermont's citizens. A decent home in a suitable living environment is a necessary element for protecting the health, safety, and general welfare of the public. The housing requirement for Vermont's expanding resident population, particularly for those citizens of low or moderate income, must be met by the construction of new housing units and the rehabilitation of existing substandard dwellings. It is in the public interest that new or rehabilitated housing should be: safe and sanitary; available in adequate supply to meet the requirements of all Vermont's residents; located conveniently to employment and commercial centers; and, coordinated with the provision of necessary public facilities and utilities and consistent with municipal and regional plans.

"(B) Sites for multi-family and manufactured housing should be readily available in locations not inferior to those generally used for single-family conventional dwellings.

"(C) There should be a reasonable diversity of housing types and choice between rental and ownership for all citizens in a variety of locations suitable for residential development and convenient to employment and commercial centers.

"RESOURCE USE AND CONSERVATION"

"(9) NATURAL RESOURCES SPECIFICALLY PROVIDED FOR

"Those natural resources referred to in section 6086(a)(1)(A) 'Headwaters', (B) 'Waste disposal', (C) 'Water conservation', (D) 'Floodplains', (E) 'Watercourses', and (F) 'Shorelines', and section

6086(a)(8)(A) 'Wildlife habitat and endangered species', and section 6086(a)(9)(B) 'Primary agricultural soils', (C) 'Forests and secondary agricultural soils', (D) 'Earth resources', (E) 'Extraction of earth resources', and (K) 'Development affecting public investments' should be planned for development and use under the principles of environmental conservation set forth in those sections.

"(10) RECREATIONAL RESOURCES

"(A) The use and development of land and waters should occur in such a way as not to significantly diminish the value and availability of outdoor recreational activities to the people of Vermont, including hunting, fishing, hiking, canoeing and boating, skiing, horseback riding, snowmobiling, and other outdoor recreational activities.

"(B) The effects of development and subdivision on availability of and access to lands which provide opportunities for outdoor recreation should be considered, and such availability of access should be provided for where feasible.

"(11) SPECIAL AREAS

"Lands that include or are adjacent to sites or areas of historical, educational, cultural, scientific, architectural or archeological value, including those designated by the rules of the environmental board, should only be developed in a manner that will not significantly reduce that value of the site or area. Sites or areas which are in danger of destruction should be placed in whatever form of public or private ownership that would best maintain and utilize their value to the public.

"(12) SCENIC RESOURCES

"The use and development of lands and waters should not significantly detract from recognized scenic resources including river corridors, scenic highways and roads, and scenic views. Accordingly conditions may be imposed on development in order to control unreasonable or unnecessary adverse effects upon scenic resources.

"(13) CONSERVATION OF ENERGY

"Energy conversion and utilization depletes a limited resource, and produces wastes harmful to the environment, while facilitating our economy and satisfying human needs essential to life. Energy conservation should be actively encouraged and wasteful practices discouraged.

"(14) TAXATION OF LAND

"Land should be appraised and assessed for tax purposes on the use of the land consistent with this act and any other state or local law or regulation affecting current or prospective use of land.

"GOVERNMENT FACILITIES AND PUBLIC UTILITIES

"(15) PLANNING FOR GROWTH

"The development and provision of governmental and public utility facilities and services should be based upon a projection of reasonably expected population increase and economic growth, and

should recognize the limits of the state's human, financial, and natural resources.

"(16) PUBLIC FACILITIES OR SERVICES ADJOINING AGRICULTURAL OR FORESTRY LANDS

"The construction, expansion or provision of public facilities and services should not significantly reduce the resource value of adjoining agricultural or forestry lands unless there is no feasible and prudent alternative, and the facility or service has been planned to minimize its effect on the adjoining lands.

"(17) PLANNING FOR TRANSPORTATION AND UTILITY CORRIDORS

"The development and expansion of governmental and public utility facilities and services should occur within highway or public utility rights-of-way corridors in order to reduce adverse physical and visual impact on the landscape and achieve greater efficiency in the expenditure of public funds.

"(18) TRANSPORTATION SYSTEMS

"Safe, convenient and economical transportation is essential to the people and economy of Vermont and should be planned so as to conform to and further the purposes of this act. Highway, air, rail and other means of transportation should be mutually supportive, balanced and integrated. The transportation system should provide convenience and service which are commensurate with need and should respect the integrity of the natural environment. New construction or major reconstruction of roads and highways should provide paths, tracks or areas solely for use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest.

"(19) PLANNING FOR WASTE DISPOSAL

"Development which is responsible for unique or large amounts of waste should be permitted only if it can be demonstrated that available methods will allow the environment to satisfactorily assimilate the waste and that the public can finance the disposal method without assuming an unreasonable economic burden."

§ 6043. Repealed. 1983, No. 114 (Adj. Sess.), § 5.

§ 6044. Public hearings

(a) The board shall hold public hearings for the purpose of collecting information to be used in establishing the capability and development plan, and interim land capability plan. The public hearings may be held in an appropriate area or areas of the state and shall be conducted according to rules to be established and published by the board.

(b) The board may, on its own motion or on petition of an interested agency of the state or any regional or local planning commission, hold such other hearings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in the determination of its policies, and carrying out of its duties, or the formulation of its rules and regulations.

(c) At least one public hearing shall be held in each district

prior to adoption of a plan pursuant to section 6042 of this title. Notice of a hearing shall be furnished each municipality, and municipal and regional planning commission in the district where the hearing is to be held not less than fifteen days prior to the hearing.

(d) The provisions of chapter 25 of Title 3 shall not apply to the hearings under this section.--1969, No. 250 (Adj. Sess.), § 21, eff. April 4, 1970; amended 1983, No. 114 (Adj. Sess.), § 2.

§ 6045. Repealed. 1983, No. 114 (Adj. Sess.), § 5.

§ 6046. Approval of governor and legislature

(a) Upon approval of a capability and development or interim land capability plan by the board, it shall submit the plan to the governor for approval. The governor shall approve the plan, or disapprove the plan or any portion of a plan, within 30 days of receipt. If the governor fails to act, the plan shall be deemed approved by the governor. This section shall also apply to any amendment of a plan.

(b) After approval by the governor, plans pursuant to section 6042 of this title shall be submitted to the general assembly when next in session for approval. A plan shall be considered adopted for the purposes of section 6086(a)(9) of this title when adopted by the act of the general assembly. No permit shall be issued or denied by a district commission or environmental board which is contrary to or inconsistent with a local plan, capital program or municipal bylaw governing land use unless it is shown and specifically found that the proposed use will have substantial impact or effect on surrounding towns, the region or an overriding interest of the state and the health, safety and welfare of the citizens and residents thereof requires otherwise.--1969, No. 250 (Adj. Sess.), § 23, eff. April 4, 1970; amended 1973, No. 85, § 5; 1983, No. 114 (Adj. Sess.), § 3.

§ 6047. Changes in the capability and development plan

(a) After final adoption, any department or agency of the state or a municipality, or any property owner or lessee may petition the

board for a change in the capability and development plan.

(b) Within 10 days of receipt, the board shall forward a copy of the petition to the district commission and regional planning agency for comments and recommendations. If no regional planning commission exists, the copy shall be sent to the affected municipal planning commissions and municipalities.

(c) After 60 days but within 120 days of the original receipt of a petition, the board shall advertise a public hearing to be held in the appropriate county. The board shall notify the persons and agencies that have an interest in the change of the time and place of the hearing and the procedures established for initial adoption of a plan shall apply.

(d)-(f) [Repealed.]--1969, No. 250 (Adj. Sess.), § 24, eff. April 4, 1970; amended 1983, No. 114 (Adj. Sess.), § 4.

Subchapter 4. Permits

§ 6081. Permits required; exemptions

(a) No person shall sell or offer for sale any interest in any subdivision located in this state, or commence construction on a subdivision or development, or commence development without a permit. This section shall not prohibit the sale, mortgage or transfer of all, or an undivided interest in all, of a subdivision unless the sale, mortgage or transfer is accomplished to circumvent the purposes of this chapter.

(b) Subsection (a) of this section shall not apply to a subdivision exempt under the regulations of the department of health in effect on January 21, 1970 or any subdivision which has a permit issued prior to June 1, 1970 under the board of health regulations, or has pending a bona fide application for a permit under the regulations of the board of health on June 1, 1970, with respect to plats on file as of June 1, 1970 provided such permit is granted prior to August 1, 1970. Subsection (a) of this section shall not apply to development which is not also a subdivision, which has been commenced prior to June 1, 1970, if the construction will be completed by March 1, 1971. Subsection (a) of this section shall not apply to a state highway on which a hearing pursuant to section 222 of Title 19 has been held prior to June 1, 1970. Subsection (a)

of this section shall apply to any substantial change in such excepted subdivision or development.--1969, No. 250 (Adj. Sess.), §§ 6, 7.

(c) No permit or permit amendment is required for activities at a solid waste management facility authorized by a provisional certification issued under 10 V.S.A. § 6605d; however, development at such a facility that is beyond the scope of that provisional certification is not exempt from the provisions of this chapter.--1990, No. 218 (Adj. Sess.), § 2.

(d) For purposes of this section, the following municipal projects shall not be considered to be substantial changes, regardless of the acreage involved, and shall not require a permit as provided under subsection (a) of this section:

(1) essential municipal wastewater treatment facility enhancements that do not expand the capacity of the facility by more than 10 percent.

(2) essential municipal waterworks enhancements that do not expand the capacity of the facility by more than 10 percent.

(3) essential public school reconstruction or expansion that does not expand the student capacity of the school by more than 10 percent.

(4) essential municipal building reconstruction or expansion that does not expand the floor space of the building by more than 10 percent.--1990, No. 276 (Adj. Sess.), § 17a.

(e) For purposes of this section, the replacement of water and sewer lines, as part of a municipality's regular maintenance or replacement of existing facilities, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement does not expand the capacity of the relevant facility by more than 10 percent.--1990, No. 276 (Adj. Sess.), § 17b.

(f) A permit application for a development for which a certificate of need pursuant to section 6606a of this title is required shall be accompanied by such certificate.--Amended 1989, No. 218 (Adj. Sess.), § 2,; No. 276 (Adj. Sess.), §§ 17a, 17b, eff. June 20, 1990; No. 282 (Adj. Sess.), § 7, eff. June 22, 1990.

(g) The owners or operators of earth removal sites associated

with a landfill closing, other than the landfill site itself, shall obtain a municipal zoning permit in lieu of a permit under this chapter, unless the municipality chooses to refer the matter to the district environmental commission having jurisdiction. At the district commission level, the matter will be treated as a minor application. If municipal zoning bylaws do not exist, the excavation application shall be subject to the provisions of this chapter as a minor application.--Added 1992, No. 256 (Adj. Sess.) § 30, eff. June 9, 1992.

(h) No permit or permit amendment is required for closure operations at an unlined landfill which began disposal operations prior to July 1, 1992 and which has been ordered closed under section 6610a or chapter 201 of this title. Closure and post-closure operations covered by this provision are limited to the following on-site operations: final landfill cover system construction and related maintenance operations, water quality monitoring, landfill gas control systems installation and maintenance, erosion control measures, site remediation and general maintenance. Prior to issuing a final order for closure for landfills qualifying for this exemption, a public informational meeting shall be noticed and held by the secretary with public comment accepted on the draft order. The public comment period shall extend no less than seven days before the public meeting and 14 days after the meeting. Public comment related to the public health, water pollution, air pollution, traffic, noise, litter, erosion and visual conditions shall be considered. Landfills with permits in effect under this chapter as of July 1, 1994, shall not qualify for an exemption as described under this section.--Added 1994, No. 232 (Adj. Sess.), § 4, eff. June 17, 1994.

(i) The repair or replacement of railroad facilities used for transportation purposes, as part of a railroad's maintenance, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement or repair does not result in the physical expansion of the railroad's facilities. --Added 1994, No. 200 (Adj. Sess.), § 2, eff. June 17, 1994.

(j) With respect to the extraction of slate from a slate

quarry that is included in final slate quarry registration documents, if it were removed from a site prior to June 1, 1970, the site from which slate was actually removed, if lying unused at any time after those operations commenced, shall be deemed to be held in reserve, and shall not be deemed to be abandoned.

(k)(1) With respect to the commercial extraction of slate from a slate quarry, activities that are not ancillary to slate mining operations may constitute substantial changes, and be subject to permitting requirements under this chapter. "Ancillary activities" include the following activities that pertain to slate and that take place within a registered parcel that contains a slate quarry: drilling, crushing, grinding, sizing, washing, drying, sawing and cutting stone, blasting, trimming, punching, splitting and guaging, and use of buildings and use and construction of equipment exclusively to carry out the above activities. Buildings that existed on April 1, 1995, or any replacements to those buildings, shall be considered ancillary.

(2) Activities that are ancillary activities that involve crushing, may constitute substantial changes if they may result in significant impact with respect to any of the criteria specified in subdivisions 6086(a)(1) through (10) of this title.

(l)(1) By no later than January 1, 1997, any owner of land or mineral rights or any owner of slate quarry leasehold rights on a parcel of land on which a slate quarry was located as of June 1, 1970, may register the existence of the slate quarry with the district commission and with the clerk of the municipality in which the slate quarry is located, while also providing each with a map which indicates the boundaries of the parcel which contains the slate quarry.

(2) Slate quarry registration shall state the name and address of the owner of the land, mineral rights or leasehold right; whether that person holds mineral rights, or leasehold rights or is the owner in fee simple; the physical location of the same; the physical location and size of ancillary buildings; and the book and page of the recorded deed or other instrument by which the owner holds title to the land or rights.

(3) Slate quarry registration documents shall be submitted to

the district commission together with a request, under The provisions of subsection 6007(c) of this title, for a final determination regarding the applicability of this chapter.

(4) The final determination regarding a slate quarry registration under subsection 6007(c) of this title shall be recorded in the municipal land records at the expense of the registrant along with an accurate site plan of the parcel depicting the site specific information contained in the registration documents.

(5) With respect to a slate quarry located on a particular registered parcel of land, ancillary activities on the parcel related to the extraction and processing of slate into products that are primarily other than crushed stone products shall not be deemed to be substantial changes as long as the activities do not involve the creation of one or more new slate quarry holes that are not related to an existing slate quarry hole.

NOTE: Sec. 3 of Act 30. EXTENSION OF MORATORIUM

With respect to quarries that qualify for registration under this act, Sec. 37(a) of No. 232 of the Act of the 1993 Adj. Sess. (1994) is amended by striking the date "April 11, 1995" and inserting in lieu thereof the date "January 1, 1997."

§ 6082. Approval by local governments and state agencies

The permit required under section 6081 of this title shall not supersede or replace the requirements for a permit of any other state agency or municipal government.--1969, No. 250 (Adj. Sess.), § 27, eff. April 4, 1970.

§ 6083. Applications

(a) An application for a permit shall be filed with the district commissioner as prescribed by the rules of the board and shall contain at least the following documents and information:

(1) The applicant's name, address, and the address of each of the applicant's offices in this state, and, where the applicant is not an individual, municipality or state agency, the form, date and place of formation of the applicant.

(2) Five copies of a plan of the proposed development or

subdivision showing the intended use of the land, the proposed improvements, the details of the project, and any other information required by this chapter, or the rules promulgated thereunder.

(3) The fee prescribed by rule. In no event shall a permit application fee exceed $135,000. Amended, 1996, No. 186, (Adj. Sess.), § 35 eff. May 22, 1996.

(4) Certification of filing of notice as set forth in § 6084 of this title.

(b) The board and district commission may conduct such investigations, examinations, tests and site evaluations as they deem necessary to verify information contained in the application. An applicant shall grant the board or district commission, or their agents, permission to enter upon his land for these purposes.

(c) Where an application concerns the extraction or processing of fissionable source material, before the application is considered the district commission shall obtain the express approval of the general assembly by act of legislation stating that extraction or processing of fissionable source material will promote the general welfare. The district commission shall advise the general assembly of any application for extraction or processing of fissionable source material by delivering written notice to the speaker of the house of representatives and to the president of the senate, and shall make available all relevant material. The procedural requirements and deadlines applicable to permit applications under this chapter shall be suspended until the approval is granted. Approval by the general assembly under this subsection shall not be construed as approval of any particular application or proposal for development.

(d) The board and commissions shall make all practical efforts to process permits in a prompt manner. The board shall establish time limits for permit processing as well as procedures and time periods within which to notify applicants whether an application is complete. The board shall report annually by February 15 to the house and senate committees on natural resources and energy and government operations. The annual report shall assess the performance of the board and commissions in meeting the limits, identify areas which hinder effective performance; list fees

collected for each permit; summarize changes made by the board to improve performance; describe staffing needs for the coming year; and certify that the revenue from the fees collected is at least equal to the costs associated with those positions.--1969, No. 250 (Adj. Sess.), §§ 8, 15, eff. April 4, 1970; amended 1979, No. 123 (Adj. Sess.), § 6, eff. April 14, 1980; 1987, No. 76, § 10; 1989, No. 276 (Adj. Sess.), § 17, eff. June 20, 1990; No. 279 (Adj. Sess.) § 3.

(e) The district commissions shall give priority to municipal projects that have been mandated by the state through a permit, enforcement order, court order, enforcement settlement agreement, statute, rule or policy.--Amended 1987, No. 76, § 10; 1989, No. 276 (Adj. Sess.), § 17, eff. June 20, 1990; No. 279 (Adj. Sess.), § 3.

(f) In situations where the party seeking to file an application is a municipality or a solid waste management district empowered to condemn the involved land or an interest in it, then the application need only be signed by that party. Amended 1991, Act 109, § 7, eff. June 28, 1991.

§ 6084. Notice

(a) On or before the date of filing of application the applicant shall send notice and a copy of the application to the owner of the land if the applicant is not the owner; the municipality in which the land is located; the municipal and regional planning commissions for the municipality in which the land is located; any adjacent Vermont municipality and municipal and regional planning commission if the land is located on a boundary. The applicant shall furnish to the district commission the names of those furnished notice by affidavit, and shall post a copy of the notice in the town clerk's office of the town or towns wherein the land lies. Amended 1991, Act 109, § 2, eff. June 28, 1991. Amended 1993, No. 232 (Adj. Sess.), § 29, eff. March 15, 1995.

(b) The district commission shall forward notice and a copy of the application to the board and any state agency directly affected, the solid waste management district in which the land is located, if the development or subdivision constitutes a facility pursuant to subdivision 6602(10) of this title, and any other municipality,

state agency, or person the district commission or board deems appropriate. Notice shall also be published in a local newspaper generally circulating in the area where the land is located not more than 7 days after receipt of the application.--1969, No. 250 (Adj. Sess.), § 9, eff. April 4, 1970. Amended 1993, No. 232 (Adj. Sess.), § 29, eff. March 15, 1995.

§ 6085. Hearings

(a) Anyone required to receive notice by section 6084 of this title and any adjoining property owner may request a hearing by filing a request within 15 days of receipt of notice. Upon receipt of notice the district commission shall treat the application pursuant to section 814 of Title 3. The district commission may order a hearing without a request within 20 days of receipt of the application.

(b) The hearing or a prehearing conference shall be held within 40 days of receipt of the application or notice of appeal. The parties shall be given not less than 10 days notice. Notice shall also be published in a local newspaper generally circulating in the area where the land is located not less than 10 days before the hearing date. Amended 1993, No. 82, § 4, eff. July 1, 1993.

(c)(1) Parties shall be those who have received notice, adjoining property owners who have requested a hearing, and such other persons as the board may allow by rule. For the purposes of appeal to the supreme court, only the applicant, the landowner if the applicant is not the landowner, a state agency, the regional and municipal planning commissions and the municipalities required to receive notice shall be considered parties. An adjoining property owner may participate in hearings and present evidence only to the extent the proposed development or subdivision will have a direct effect on is or her property under section 6086(a)(1) through (a)(10) of this title.

(2) A district commission, according to the procedures established in the rules of the board, shall determine party status with respect to individuals and organizations at the commencement of the hearing process and shall re-examine those determinations before the close of hearings and state the results of that re-examination

in the district commission decision. In the re-examination of party status coming before the close of district commission hearings, persons having obtained party status up to that point in the proceedings shall be presumed to retain party status. However, on motion of a party, or on its own motion, a commission shall consider the extent to which parties continue to qualify for party status. Determinations made before the close of district commission hearings shall supersede any preliminary determinations of party status. Added, 1993, No. 232 (Adj. Sess.), § 30, eff. March 15, 1995.

(d) If no hearing has been requested or ordered within the prescribed period no hearing need be held by the district commission. In such an event a permit shall be granted or denied within 60 days of receipt; otherwise, it shall be deemed approved and a permit shall be issued.--1969, No. 250 (Adj. Sess.), §§ 10, 11, eff. April 4, 1970; 1973, No. 85, § 9; 1991, No. 109, § 3, eff. June 28, 1991.

(e) The board and any district commission, acting through one or more duly authorized representatives at any prehearing conference or at any other times deemed appropriate by the board or by the district commission, shall promote expeditious, informal and nonadversarial resolution of issues, require the timely exchange of information concerning the application, and encourage participants to settle differences. No board member or district commissioner who is participating as a decisionmaker in a particular case may act as a duly authorized representative for the purposes of this subsection. These efforts at dispute resolution shall not affect the burden of proof on issues before a commission or the board, nor shall they affect the requirement that a permit may be issued only after the issuance of affirmative findings under the criteria established in section 6086 of this title. Added, 1993, No. 232 (Adj. Sess.), § 31, eff. March 15, 1995.

(f) A hearing shall not be closed until a commission or the board provides an opportunity to all parties to respond to the last permit or evidence submitted. Once a hearing has been closed, a commission or the board shall conclude deliberations as soon as is reasonably practicable. A decision of a commission or the board shall be issued within 20 days of the completion of deliberations.

Added, 1993, No. 232 (Adj. Sess.) § 31, eff. March 15, 1995.

§ 6086. Issuance of permit; conditions and criteria

(a) Before granting a permit, the board or district commission shall find that the subdivision or development:

(1) **Will not result in undue water or air pollution.** In making this determination it shall at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable health and environmental conservation department regulations.

(A) **Headwaters.** A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable health and environmental conservation department regulation regarding reduction of the quality of the ground or surface waters flowing through or upon lands which are not devoted to intensive development, and which lands are:

(i) headwaters of watersheds characterized by steep slopes and shallow soils; or

(ii) drainage areas of 20 square miles or less; or

(iii) above 1,500 feet elevation; or

(iv) watersheds of public water supplies designated by the Vermont department of health; or

(v) areas supplying significant amounts of recharge waters to aquifers

(B) **Waste disposal.** A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable health and environmental conservation department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into

ground water or wells.

(C) **Water conservation.** A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the design has considered water conservation, incorporates multiple use or recycling where technically and economically practical, utilizes the best available technology for such applications, and provides for continued efficient operation of these systems.

(D) **Floodways.** A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria:

(i) the development or subdivision of lands within a floodway will not restrict or divert the flow of flood waters, and endanger the health, safety and welfare of the public or of riparian owners during flooding; and

(ii) the development or subdivision of lands within a floodway fringe will not significantly increase the peak discharge of the river or stream within or downstream from the area of development and endanger the health, safety, or welfare of the public or riparian owners during flooding.

(E) **Streams.** A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of lands on or adjacent to the banks of a stream will, whenever feasible, maintain the natural condition of the stream, and will not endanger the health, safety, or welfare of the public or of adjoining landowners.

(F) **Shorelines.** A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other criteria, the development or subdivision of shorelines must of necessity be located on a shoreline in order to fulfill the purpose of the